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ABSTRACT

In this paper the first year accomplishments and failings of the Carter Administration in civil rights enforcement are assessed. Areas considered include the following: leadership and management, employment, education, housing, health and social services, and veterans affairs. Enforcement in some areas has improved but progress has been slow and in some cases nonexistent. In employment, the Administration has developed a plan for reorganization that promises to upgrade efforts to deal with discrimination in federal employment. A major initiative in education was the development of regulations to carry out the law protecting handicapped persons from discrimination. A pattern of mixed performance has marked the Administration's efforts in urban and rural housing development. The civil rights record in the health and social service fields is poor. It has been limited to responding to litigation, and often responding in a manner that is adverse to the interest of the poor, the minorities and the handicapped. Furthermore, the Administration has been sluggish in protecting the rights of minority veterans to equal treatment in benefit programs. Despite some promising initiatives the Administration needs to demonstrate that it is prepared to confront the tough issues that lie ahead. (Author/AM)

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THE CARTER ADMINISTRATION AND CIVIL RIGHTS

An Assessment of the First Year

Leadership Conference on Civil Rights

January, 1978

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Preface

For almost three decades, the Leadership Conference on Civil Rights has served as the vehicle through which civil rights organizations, labor unions, civic groups, religious bodies and other public interest associations assert their common interest in effective Federal action to secure and to enforce the right to equal opportunity under the law.

During the past decade, the Conference now numbering 140 member organizations, has devoted much of its energies to monitoring the actions of Federal agencies charged with enforcing the civil rights laws enacted by Congress during the 1960s. This task is vested in the Conference's Committee on Compliance and Enforcement which includes in its membership representatives of the principal advocacy groups seeking equal protection of the law for racial, religious, and ethnic minorities as well as for women and handicapped persons. The Committee is organized into task forces on Education, Employment, Housing, Health, Veterans Affairs, Womens' Rights, Regulatory Agencies, and Federal Programs with specialists in each area.

When the Carter Administration took office in January, 1977, it faced a very large backlog of unmet needs generated by the years of Federal neglect of civil rights laws that had preceded. The Leadership Conference sought to assist the new Administration by preparing and submitting a series of position papers analyzing the major deficiencies in civil rights enforcement and documenting the need for action. Taken together, these

papers constituted our civil rights enforcement agenda for the new Administration. The papers were followed by a series of meetings with Vice President Mondale, Budget Directors Lance and McIntyre, HEW Secretary Califano, Labor Secretary Marshall, Assistant Attorney Generals Days and Babcock, HUD Under Secretary Janis, EEOC Chair Norton and others, to discuss the issues.

Now we believe the time is ripe for a preliminary assessment of the Carter Administration's performance. In undertaking it we have tried to take account of the limitations on what can be accomplished in a year and of the fact that many of the most important tests of the Administration's will and capacity are still to come. Nevertheless, the first year has offered important clues to the tone and direction of the Administration, both to positive trends and to continuing deficiencies that must be cured if the promise of law is to be translated into reality.

The position papers we submitted a year ago were designed to assist the new Administration in fulfilling its civil rights commitments and to set a standard against which its performance could be measured. It is in the same spirit that we present the following report.

SUMMARY

President Carter took office in January, 1977 at a time when the Federal effort to secure equal treatment under law for all citizens was at a low ebb. Discriminatory practices against minorities, women and the handicapped still were prevalent, although sometimes in subtle form, and the effects of past mistreatment persisted. Yet the rhetoric of the last two Administrations had apparently helped to convince much of the American public that discrimination was a thing of the past. The Federal machinery that Congress had established in the 1960s to eradicate denials of civil rights remained largely intact, but it had grown rusty from disuse.

After a year, the Carter Administration's record on civil rights enforcement is mixed. Enforcement in some areas has improved. But progress has been slow and in some cases nonexistent. Many of the important tests are still to come.

The anti-civil rights pronouncements and posture of the previous two Administrations have ceased. Policymakers and administrators are accessible and open to suggestion. But President Carter has made little use of the moral influence of his office to further public understanding of continuing denials of opportunity and to rally public support for effective civil rights enforcement.

For many Federal agencies the year has been one of rebuilding, reorganizing and establishing new standards defining

equal opportunity in areas where they were long overdue. But the effort is proceeding slowly. New appointees have had difficulty getting on top of their bureaucracies and getting them moving. With few exceptions, Federal agencies have not shown a readiness to use the sanctions against discrimination that make civil rights enforcement effective.

President Carter's Memorandum in July on enforcement of Title VI of the Civil Rights Act of 1964 was the strongest support voiced for this critical compliance tool since the law was signed by President Johnson. The President has appointed a number of able and experienced officials with strong civil rights commitments. Yet he has failed to name a senior advisor to help him resolve important policy issues, insure coherent, government-wide standards of enforcement and exercise the leadership on civil rights that can come only from the White House. The Office of Management and Budget still has not created a unit that would enable it to fulfill its important role in improving the management of civil rights programs. The Justice Department has initiated efforts toward better Title VI coordination, but it still goes to court to defend agencies with sorry records of enforcement.

In employment, the Administration has developed a plan for reorganization that promises to allay confusion in the setting of standards by vesting EEOC with the major responsibility for policymaking and that will also upgrade efforts to deal with

discrimination in Federal employment. EEOC has instituted its own internal reorganization and measures to speed complaint handling and reduce its backlog. OFCCP has barred some contractors from Federal jobs because of employment discrimination and has moved to obtain back pay for victims of past discrimination, and more jobs for women in construction. Federal employees have benefitted from moves to afford them the same protection given workers in the private sector, and new procedures have been initiated to increase the number of women, minorities, handicapped persons and the economically disadvantaged. But Civil Service Commission procedures still load the dice against Federal workers who have been victims of discrimination.

On the crucial issue of affirmative action in admission to professional schools, the Administration evolved a responsible position in the Bakke case. Without embracing quotas, the Justice Department defended the constitutionality and necessity of race-conscious measures to undo the effects of past discrimination. The Department has also defended the constitutionality of the important set-aside provision in the Public Works Act of 1977 designed to give minority contractors a fairer share of construction work.

A major initiative in education was HEW's issuance of long-delayed regulations to carry out the law protecting handicapped persons from discrimination. Other positive steps in

education by the Carter Administration included new guidelines for equal opportunity in colleges and universities, an HEW settlement of several lawsuits which promises to alleviate delays in handling civil rights investigations and to bring more resources into the effort, an agreement to collect data from public school systems needed to detect violations, and a pro-civil rights stance before the Supreme Court by the Justice Department in the Dayton school desegregation case. On the negative side, the Administration has yet to develop a clear counterthrust to Congressional efforts to wreck school desegregation through anti-busing measures and HEW has yet to clarify the rules against discrimination in such important areas as sex bias under Title IX, bilingual education and segregation in Northern and Western school systems. Nor has HEW demonstrated its readiness to apply the sanctions of withholding funds from those who violate the law -- a measure essential to making its compliance program credible.

In housing there are two critical concerns: (1) strong fair housing enforcement to end disinvestment and avoid displacement in minority inner city neighborhoods and to provide minority access to suburbs; and (2) a subsidy program sufficient to bring decent shelter within the reach of low and moderate income families. Without an adequate subsidy program very large numbers of minority families will not only be denied access to new housing opportunities, but may even be pushed out of the neighborhoods where they now live when these

areas are renewed or revitalized. While the Carter Administration has obtained increased funds for public housing, in its new budget request it has refused to advocate housing subsidies beyond the inadequate levels embraced by the Ford Administration. Budget-balancing by OMB has thwarted the vigorous efforts of Secretary Harris to obtain an appropriations request that would meet national housing objectives.

The issue in fair housing enforcement is whether the Administration will make vigorous use of the tools provided by the Fair Housing Act of 1968 and the 1974 and 1977 Housing and Community Development Acts. The Secretary of Housing and Urban Development (HUD) has made strong statements in support of opening up housing in the suburbs to minorities, but departmental action to achieve this objective has been taken in only a few cases and must be expanded. HUD in October proposed regulations that included a number of helpful steps, such as the strengthening of the citizen participation process, the provision of counseling services for homeowners and renters, the requirement for coordination between community development and housing activities, and a better definition of housing needs. Shortfalls in the proposals included the absence of a method for HUD to evaluate material submitted by communities, the absence of a way for those eligible for subsidized housing to locate such housing anywhere in a metropolitan area, and the failure to insist that local government seeking funds adhere to a metropolitan plan as a basis for determining housing needs and

goals, and the failure to insist on timely and substantial progress in meeting housing goals.

With respect to the Fair Housing Act of 1968, the Secretary has promised to issue long sought regulations to set standards for those covered by the fair housing law. But the Department must still take strong steps to alter the well entrenched racially dual housing market.

A similar pattern of mixed performance has marked the Administration's efforts in rural housing and development. It has activated a rent supplement program, supported an increase for a public housing program, and initiated statutory changes to enable small communities to do long-range planning. However, proposed regulations will limit the number of communities that can participate. The Farmers' Home Administration has not initiated a needed overhaul of its civil rights compliance procedures, although it has moved to create an appeals process. Nor has the President reestablished a unit to oversee rural development in his executive office.

The civil rights record of this Administration in the health and social service fields is poor. It has been limited to responding to litigation, and often responding in a manner adverse to the interests of the poor, minorities and handicapped persons. Little or no guidance has been given to state and local agencies which receive Federal funds, enforcement is lax or non-existent, and compliance staff is inadequate.

The Carter Administration has been sluggish in protecting the rights of minority veterans to equal treatment in benefit programs. Little has happened toward development of a Title VI or housing enforcement structure in the Veterans Administration (VA). In spite of pleadings that legislation on the discharge of Vietnam veterans would work disproportionate harm on minority veterans, the President signed the bill. Further compounding the dilemma for black veterans, the VA has no black attorneys on the Board for Veterans Appeals.

In sum, despite some promising initiatives, it is still to be demonstrated that the Administration is prepared to confront the tough issues and take the difficult steps still needed to realize the promise of equal opportunity. In the coming months, the Administration will face several important tests of its commitment, including the following:

° whether the Department of Justice will take a clear cut position in the courts challenging the constitutionality of Congressional enactments that jeopardize the desegregation of public schools.

° whether the Secretary of Health, Education and Welfare will resist political pressures and use administrative sanctions against states which still refuse to take measures adequate to end racially dual systems of higher education.

° whether HEW will clarify the rules against sex discrimination and take firm steps to enforce the right to equal treatment under Title IX.

whether the Department of Labor, HEW and other agencies will take vigorous action to enforce the rights of handicapped people to equal job and educational opportunity.

° whether President Carter will give personal leadersnip to the drive for equal opportunity and improve the capacity of his Executive Office to manage and monitor the Federal civil rights effort.

The answers to these and similar questions will determine whether the Carter Administration has the will and capacity to make civil rights laws work for the vast numbers of Americans who are still denied an equal chance.

On the pages that follow is a more detailed assessment of the accomplishments and failings of the Carter Administration in civil rights enforcement in its first year.

I. Leadership and Management

President Carter has made a strong verbal commitment to civil rights and commendable appointments to important positions, but implementation has not followed uniformly.

A. Executive Leadership

The anti-civil rights posture of the Nixon and Ford Administrations has been reversed. Frequent pronouncements from the White House in opposition to civil rights measures have ceased. Instead, President Carter voiced the strongest support of the Civil Rights Act of 1964 since it was signed by President Johnson. President Carter stated in a July Memorandum to the Heads of Executive Departments and Agencies on enforcement of Title VI of that act:

> "... (T)he government of all the people should not support programs which discriminate on the grounds of race, color or national origin. There are no exceptions to this rule; no matter how important a program, no matter how urgent the goals, they do not excuse violating any of our laws -- including the laws against discrimination."

Unfortunately, when the statement was issued as part of a series of Presidential actions, no effort was made by the White House to give it special visibility. Consequently, an ideal opportunity was lost to let the country know how the President

felt on the government's most effective civil rights enforcement tool. Nor has there been adequate follow up, e.g., to put the force of Mr. Carter's leadership behind efforts to end sex discrimination in Federal programs.

B. Appointments

The President made some fine appointments to positions critical to civil rights interests. In addition to Cabinet and agency head appointments, people with talent and experience in the field have been named to key civil rights posts.

However, in the White House there is no senior advisor with specific responsibility to link the President's influence and concern to the many Federal civil rights efforts. Instead, he seems to rely on ad hoc involvement of various aides in response to outside pressures and events. Consequently, White House attention is reduced to the level of last-resort trouble shooting. There is no oversight or advice on the entire range of Federal equal opportunity programs, no informed judgment that relates to the departments and agencies with program responsibility.

C. OMB Oversight

The Office of Management and Budget (OMB) has devoted much energy to needed review and reorganization of the government's civil rights enforcement machinery. But the time and

effort required to mount the reorganization effort is not an excuse for OMB's failure to assume other basic civil rights responsibilities.

Among the areas ignored is the establishment of a civil rights unit in the office of the OMB Director. Such a unit would have authority to make nondiscrimination a working part of the OMB operation with concrete objectives for all Federal budget and program personnel. It could mandate as part of the Circular A-11 process that all Federal agencies collect and use data enabling them to evaluate the impact of their programs on minorities, women and the handicapped. OMB leadership is needed to assure that data essential to civil rights enforcement is obtained, while relieving employers and other institutions of excessive and unnecessary data requirements. An OMB unit could also make all agencies accountable for clearer civil rights standards and policy objectives.

D. Enforcement

In response to the President's strong statement on Title VI, the Attorney General has moved to revive the Justice Department's long neglected role as coordinator of these enforcement efforts. The Justice Department brought together the civil rights staff of all the major agencies to discuss the development of stronger and more uniform enforcement standards throughout government. Each agency was then asked by Justice to submit Title VI regulations with firm timetables

for each step in the compliance process, including funds cut-off. Consummation of these efforts would put real meaning into Title VI, which prohibits the use of Federal money in any activities that discriminate against minorities.

On the other hand, the Justice Department's handling of private litigation against government agencies' enforcement of Title VI has been disappointing. For a decade civil rights organizations have had to go to court to force agencies to carry out their Title VI and other statutory obligations. In such cases, the Justice Department, through its Civil Division, has defended the accused agencies, often invoking technical defenses when the Federal defendant is obviously in the wrong. In the waning days of the Ford Administration, the head of the Civil Rights Division sought to eliminate this anomaly of the Department prosecuting such issues in the private sector while defending them when the government was involved. He said that civil rights cases would be referred initially to the Civil Rights Division instead of the Civil Division which ordinarily handles them. If the claims were found meritorious, Justice would urge the derelict agency to settle the case on on penalty of not being defended by the Justice Department. Thus far, the current Administration has not followed up on this policy. The only real movement has been a memo from the Attorney General to local U.S. attorneys advising that in defending Federal agencies against charges of job discrimination, the

Justice Department will not take positions inconsistent with those it takes in prosecuting private employers for similar discriminatory practices. In Title VI and other areas, however, Civil Division lawyers continue to defend government agencies, regardless of how weak or unsubstantiated their positions may be.

II. Employment

The Carter Administration has moved firmly to attempt to untangle years of malaise in enforcement of equal employment opportunity law and regulations.

A. Equal Employment Opportunity Commission

The Equal Employment Opportunity Commission (EEOC) has been beleaguered throughout its history. What the Administration does about EEOC will largely determine the final record on employment discrimination. It is off to a good start with the appointment of experienced, resourceful and dedicated persons to key positions, led by Eleanor Holmes Norton as Chair.

She has instituted measures to remedy the Commission's administrative deficiencies and internal bickering. The field structure has been reorganized, eliminating regional offices and litigation centers, enlarging most district offices, and setting up a number of new area offices to expedite the processing of complaints and bring the Commission closer to its clients. Litigative, conciliation and investigative functions have been integrated -- a reform long overdue.

New systems and programs have been established to reduce the Commission's notorious backlog, and to speed up the resolution of complaints and to cope with systemic discrimination. Three model offices have been created to implement these reforms and test the new machinery. Early returns indicate they are producing results on old and new cases.

Among the problems unresolved are issues of EEOC's relationship with state and local fair employment practice agencies, particularly those which do not have authority to resolve discrimination complaints.

B. Employment Reorganization

As the new leadership in EEOC builds the agency's capacity, its role as the lead agency for fair employment enforcement will be strengthened under the terms of a reorganization plan proposed by a Presidential Task Force. The reorganization plan, if approved by the Congress, will accomplish two major goals recommended by the Leadership Conference. It will vest the EEOC with authority to set equal employment policy for all Federal agencies, abolishing the Equal Employment Opportunity Coordinating Council which had succeeded only in promulgating testing guidelines which conflicted with those of the EEOC. The plan will also transfer to the EEOC jurisdiction over cases of discrimination in Federal employment, divesting the Civil Service Commission of authority it had mishandled. Other aspects of the plan include a transfer to EEOC at later dates of contract compliance, equal pay, and age discrimination responsibilities now handled by the Department of Labor.

C. Contract Compliance

The OFCCP has barred three contractors from government work because of discrimination in employment. This compares with only 12 previous disbarments since the Office of Federal Contract Compliance Programs (OFCCP) was established in 1965. In addition, 12 cases are now pending administratively or in the courts.

Increased attention by OFCCP to the banking and insurance industries has resulted in the filing of an administrative complaint against a major Midwest bank and a show cause order against a nationally known insurance company.

The Office also has been trying to obtain back pay awards for victims of employment discrimination. In August it issued proposed regulations which for the first time will require goals and timetables for women in the construction industry.

In many respects, however, the contract compliance program is still moving slowly. Regulations to implement Section 503 of the Rehabilitation Act, requiring affirmative action in Federal contracts for handicapped persons, were promulgated during the last Administration. But implementation has been limited largely to the processing of complaints and to a program of public awareness. Even on complaints, few have been resolved and long delays have been common. Little improve-

ment has occurred in the past year and employers are not likely to take their obligation seriously until they believe noncompliance will result in sanctions.

OFCCP, too, is undergoing extensive reorganization with a planned consolidation of eleven compliance units now located in other agencies into the Labor Department. It remains to be seen whether the newly reconstituted OFCCP will be able to get the job done.

D. Federal Employment

The Attorney General has announced a new policy to apply the same standards in job discrimination cases when the Federal government is the defendant as it does when the government is the prosecutor. In the past the Justice Department's Civil Division in defense of suits brought by Federal workers complaining of job discrimination applied different standards than the Civil Rights Division prosecuting such suits against private employers or state and local government agencies. For example, the Civil Division previously argued that the 1972 amendments to Title VII of the Civil Rights Act were not retroactive for Federal workers and workers were not eligible to be beneficiaries of class action suits unless they had first filed an administrative complaint. Such technical defenses had been opposed by the Civil Rights Division in prosecuting job discrimination cases.

Similar progress has been made on the testing guidelines. The Civil Service Commission, EEOC and the departments of Labor

and Justice have agreed on a single set of standards on job test fairness which have been sent out for public comment. In the past differing standards have been used for different employers, with generally more lenient guides being applied to government employers and contractors.

The Civil Service Commission has been seeking new ways of increasing opportunity for women, minorities and the handicapped in Federal employment. The Commission has approved a Special Emphasis Hiring Program to improve the chances of these groups in classifications where they are grossly underrepresented. Agencies would be authorized to fill up to 20 percent of job vacancies in these classifications on an excepted basis.

A laudatory action was the Civil Service Commission's settlement of the Peggy Griffiths case. Prior to the Carter Administration, Mrs. Griffiths had gone to court, charging the Commission with race and sex discrimination for failing to select her as Chairman of its Appeals Review Board, of which she was a member. Ironically, the Board hears appeals in job discrimination cases. The new Administration now has agreed to appoint her as Chairman and award back pay.

Despite new leadership and initiatives, many problems remain in the Civil Service Commission's program to protect Federal workers against discrimination. Among the continuing

barriers are over complicated regulations that hamper the prosecution of complaints, strict enforcement of time limitations against complainants (but not against the agencies), the inability of complainants to obtain information important to the prosecution of their complaints and uneven quality in investigations. Transfer of the Commission's functions to the EEOC will provide an opportunity for a long-needed overhaul of the system.

Finally, the Commission, while acting last September to issue a long promised rule to protect handicapped persons from job discrimination in the Federal government, did not take adequate action. Its proposed rule, apart from establishing a complaint procedure, amounted to little more than a policy declaration against discrimination, failing to specify practices that constitute discrimination or to give guidance to employers on the reasonable accommodation they must make in hiring and promoting handicapped persons. In response to protests from groups representing the handicapped, who were not consulted before publication of the proposed rule, the Commission agreed to extend the comment period and consider additional views.

E. State and Local Employment -- ORS and LEAA

Since its adoption in 1972, General Revenue Sharing has been the target of considerable criticism by civil rights advocates. It is part of the block-grant approach under which funds are given to state and local govenments with broad discretion on how they may be used. Although ORS and the other block-grant

programs such as LEAA include nondiscrimination requirements in the law, the Office of Revenue Sharing refrained for several years from active monitoring and enforcement of civil rights standards, on grounds that such activity would be inconsistent with the no-strings concept of the program. As a result, the complaint and investigation procedures at ORS were virtually nonexistent and the agency refused to take steps to apply the sanction of fund suspension, even in cases where a court discrimination finding has been made in lawsuits brought by the Federal government itself.

Properly enforced, the revenue sharing and law enforcement assistance program could be a vehicle not only for assuring equity in municipal services but for providing new job opportunities for minorities and women in state and local government -- areas where they have long suffered discrimination.

Protests by civil rights groups against the failures of ORS and LEAA to carry out statutory civil rights responsibilities led to legislative reform. Strong and specific standards for complaint handling, investigations, case settlements, and fund withdrawals were written into the GRS and LEAA renewal legislation passed in late 1976.

There was considerable hope that the Carter Administration would put real meaning into those revised standards. But the Administration's record on this new and important program has been mixed. Welcome improvements have been made in the Office of Revenue Sharing's regulations on civil rights and citizen

participation, correcting deficiencies in regulations that were pushed through in the last days of the Ford Administration. The staff capacity of ORS to police compliance has also improved considerably and the new director of the agency has voiced a strong commitment to civil rights enforcement.

But improved standards have not yet produced much in the way of results, particularly the suspension of funding to long-standing noncompliers, a step needed to establish credibility in civil rights enforcement. A telling example of the agency's continued default in the civil rights area is its refusal to seek out court cases where findings of discrimination have been made and general revenue sharing fund use may be involved. In ORS's view these cases would have to be officially brought to the agency's attention before the agency can consider applying administrative remedies. In contrast, the Law Enforcement Assistance Administration, which is subject to similar statutory obligations, has made a more substantial effort to seek out court decisions and take follow-up action.

There are also indications that in several cases ORS has been seeking to avoid strict statutory time limits for dealing with complaints by allowing additional time in exchange for no more than a general promise to reach a settlement by the recipient government.

F. Legislation

The Administration gave strong support to the efforts of womens', civil rights and labor groups to secure legislation

to overturn the Supreme Court's 1976 decision in the Gilbert case. The bill would amend Title VII to bar discriminatory treatment in jobs or benefits based on pregnancy.

III. Education

The Administration's performance in bringing about equality of opportunity in education has been mixed: progress on some fronts, stalling on others, and simply inaction on others.

A. Policy Direction

Secretary of Health, Education and Welfare (HEW) Joseph Califano led off early in February with a forthright statement of policy on civil rights. He said:

> "There is no greater mission for the Federal government -- or for this Department -- than ensuring that all Americans are treated equally and do not suffer discrimination due to race, or sex, or handicaps.... Lengthy delays can undermine the purpose of the civil rights laws and destroy confidence in the Government's will to enforce them. In fairness, however, we can only proceed in these cases when we have accurate and up-to-date data... We have no desire even to cut off funds to any school district or other educational institutions. But the way to ensure compliance with civil rights laws is to make clear that we will order fund cutoffs if we must."

Yet, nine months later, Secretary Califano characterized the cut off of funds as an "atomic bomb penalty", saying that he was seeking alternative means of dealing with fund recipients that engage in discrimination.

The ambivalence of these two statements was reflected in the performance of the Secretary's Office of Civil Rights.

B. Policy Development

A key HEW responsibility is the setting of standards, defining what constitutes discrimination and what is equal treatment under law. Standards are needed to advise institutions of their responsibilities, and victims of discrimination of their rights and to give HEW staff guidance in conducting investigations.

In April, the Office of Civil Rights under court order published standards to fill an eight-year vacuum in civil rights policy for institutions of higher learning receiving Federal funds. In May, after public demonstrations by handicapped persons, the Office issued strong regulations defining responsibilities of institutions to provide equal treatment for the handicapped, a matter which had been pending since enactment of the Rehabilitation Act in 1973. Furthermore, OCR has developed procedures to assist recipient institutions in coming into compliance.

However, large gaps remain in policy development. HEW has failed to establish adequate standards to prevent sex discrimination by educational institutions in employment, vocational training, dress and grooming codes, and athletics. Provision of equal educational opportunity for non-English speaking children has been hampered by inconsistent policies in OCR and the Office of Education, and by absence of compliance policies in

OCR's regional offices. The Department also has not dealt with school discipline practices that cause a disproportionately high number of suspensions of minority students.

Another serious policy deficiency has been in desegregation of schools in the North and West. In spite of Federal court orders, HEW has not adopted guidelines for non-discriminatory pupil assignment in these districts.

C. Management and Resources

The Office of Civil Rights simply has not had enough staff to eliminate its backlog of citizen complaints, conduct compliance and pre-award reviews, and take other enforcement action for which it is responsible. Secretary Califano, in a settlement with civil rights groups of the successful lawsuits they had brought against HEW in the Federal courts agreed in December to seek Congressional approval for almost 900 new positions, almost doubling OCR's staff.

More staff alone, however, is not the solution to civil rights enforcement. OCR must find a way to increase the efficiency of its staff. The agency estimates that an average of 44 person-days are required to investigate a complaint and more than 100 for various compliance reviews, calculations that reveal major problems of inefficiency. Obviously the Department must induce better productivity to properly police the $40 billion HEW budget.

D. Enforcement

The true test of the verbal support for civil rights given by President Carter and Secretary Califano is whether HEW is prepared to take firm action against law violators. OCR is trying to resolve complaints in a timely manner. But its record is erratic, especially on complaints of sex discrimination. What's more, the professional quality of investigations is poor. OCR investigators too often rely solely on the word of school officials. They do not dig into the facts; they do not look for continuing effects of past discrimination.

And despite the pronouncements cited above, the Carter Administration has been as reluctant as its predecessors to terminate or defer funds to enforce civil rights laws. Fund termination has not been used once in the past year. Despite a pledge to take quick and firm action in six cases he found on his desk recommending fund termination, the Secretary has allowed at least four of these cases to drag on for almost a year without terminating funds. This delay persists even after a review ordered by the Secretary showed that no material facts had changed to warrant non-enforcement.

Deferral of new program money after efforts at voluntary compliance have failed is an effective enforcement tool because it puts pressure on discriminators to move quickly to remedy violations. Yet HEW has vacillated in using the remedy. In a Chicago school case, the Department failed to invoke deferral even after an administrative law judge sustained a finding that the school system had violated Title VI. This set a damaging

precedent, despite HEW's later settlement with Chicago providing for an end to teacher discrimination and the initiation of bilingual education programs. The Chicago settlement and an agreement with New York City to end racial discrimination in teacher assignments constituted HEW's two concrete achievements in Title VI implementation during the year.

HEW also wavers on deferring funds for sex discrimination. One very modest step, deferring new funds to institutions which refused even to provide the required written assurances of compliance, was postponed time and again.

Failure to use consistently these enforcement tools raises questions about the Administration's seriousness in enforcement of anti-discrimination laws.

E. Data Collection

Systems to obtain basic data from public schools are a crucial management tool for effective civil rights enforcement, but efforts to collect information encounter strong resistance from state and local officials who claim undue Federal interference. Secretary Califano, bucking intense pressures from state and local school officials and from Congress, went ahead with the 1976-77 survey of elementary and secondary schools. The survey's purpose is to obtain from educational institutions and school systems data on race, sex and the handicapped necessary for the enforcement of civil rights laws.

In designing the 1978-79 survey, however, the Office of Civil Rights in an attempt to make reporting to Federal agencies less burdensome, has eliminated important questions and reduced the number of school districts covered in each biennial survey. Waivers of certain reporting requirements and filing deadlines unfortunately have been granted to two of the nation's largest school systems -- New York and Los Angeles.

Added restraints came in September through a White House directive requiring agencies to cut red tape in data reporting requirements. The Administration imposes severe burdens on HEW to justify collection of civil rights data necessary for enforcement. While the Leadership Conference opposes unnecessary or duplicative data collection efforts, the recent Administration pronouncements fail to recognize the importance of basic data to effective enforcement.

F. Legislation

The Carter Administration's attitude toward anti-busing measures is an improvement over the Nixon/Ford years. Gone are the virulent assaults from the White House on busing and school integration.

The first real test came early in the Administration on interpretation of the Byrd Amendment. The amendment prohibits HEW from requiring the transportation of students for dese-

gregation purposes beyond the closest school offering the appropriate grade level of education. In a Kansas City (Mo.) case, Attorney General Griffin Bell and Secretary Califano decided that the amendment did not prevent HEW from requiring the pairing of two nearby schools in order to remedy discrimination. Responding to this interpretation, Congress altered the Byrd Amendment to prevent even this limited form of desegregation. The Administration on record opposed the change, but not with the forcefulness necessary to block its passage. President Carter remained silent on the issue. The end result is that HEW is at present virtually stripped of power to compel school desegregation. Civil rights groups are now challenging the anti-busing riders in Court. A critical test for the Carter Administration is whether it will join in challenging the constitutionality of the amendments. In signing the HEW appropriations bill, President Carter did note that the Attorney General had advised him that the rider raises "vexing constitutional questions".

Another test will come on a bill by Sen. Biden, already approved by the Judiciary Committee, to further restrict the authority of Federal courts in school desegregation. Although Attorney General Bell is on record in opposition, the Administration will have to act more vigorously than it did in the Byrd Amendment fight if the bill is to be defeated when it reaches the floor.

In short, the Carter Administration has yet to provide the leadership necessary to reverse the tide of anti-integration feeling in Congress and to assure the courts they will have support in upholding the Constitution.

The Administration also has yet to make known its position on three Federal programs which are expiring that affect educational opportunity for minorities. They are (1) Title I of the Elementary and Secondary Education Act (ESEA) which provides compensatory services to educationally disadvantaged students; (2) Title VI of ESEA which supports bi-lingual education programs; and (3) the Emergency School Aid Act which provides Federal assistance to school systems desegregating under Federal court orders or HEW requirements.

G. Litigation

The Justice Department took a pro-civil rights position before the Supreme Court in the Dayton school desegregation case. It has taken similar positions in the lower courts.

Unfortunately, the Department did not file a single new school desegregation case in 1977. And the Department has yet to develop a clear position on metropolitan school desegregation. This question of desegregation across district lines will be at issue in 1978 in cases involving Indianapolis, Atlanta, and perhaps others.

IV. Housing

Although machinery has cranked along haltingly to provide more housing for the poor and minorities, the decisive elements in the Carter Administration record will be the amount of funds it seeks and its efforts to enforce fair housing.

A. Housing and Community Development Act

Implementation of the 1974 and 1977 Housing and Community Development Acts as Congress intended will be a fair test of the Administration's concern for the housing needs of minorities and women heads of households. These persons constitute a substantial segment of the low and moderate income population that Congress targeted as primary beneficiaries of funds dispensed under the acts. In the past three years they have not benefited commensurately with the Congressional intent.

The Department of Housing and Urban Development (HUD) in October proposed regulations for implementation. The following changes proposed can be listed as positive: (1) applicants for funds will be required to coordinate housing and community development activities; (2) the strengthening of citizen participation from development through execution of programs, including technical assistance to citizens groups; (3) improved definition of what constitutes "urgent needs"; (4) the encouragement of metropolitan planning and assessment of housing needs; (5) the strengthening of procedures for guaranteeing that applicants provide housing assistance funds for the needy; (6) the elimina-

tion of the emphasis on funding existing housing that restricted the flow of minorities to white areas; (7) the creation of a Federally funded counseling service to homeowners and renters.

There are deficiencies in the proposed regulations that should be remedied: (1) even though metropolitan plans are encouraged, funding is not conditioned on adhering to those plans; (2) the standard for achieving housing goals, a requirement that an applicant meet 5 percent of its stated need each year, is inadequate; (3) the absence of a method for HUD to collect its own data for evaluation of applications; and (4) failure to protect against displacement of low income families that may result from neighborhood revitalization and economic development activities. Other problems include the continuation of slow processing of complaints and grievances; the absence of action on the critical issue (for minorities) of standards for selecting sites for subsidized housing; the absence of a procedure under which tenants eligible for subsidized housing can be certified to obtain it anywhere in a metropolitan area; the failure to extend tenant lease and grievance procedures in public and private low income housing units to the subsidized leased housing program (Section 8); the limitation of the scope of counseling services.

B. Rural Housing

Spurred by a Federal court order, the Administration in November put into effect a rural rent supplement program enacted in 1974. The Farmers' Home Administration, which administers the program, has also hired an attorney to draft comprehensive appeal procedures for applicants, borrowers and tenants who feel abused by decisions in county offices.

The Carter Administration's support for the first increase in the traditional public housing program since the Nixon moratorium will benefit rural communities, for this housing historically has been successful in rural areas. Administration initiative led to a statutory change which will allow small cities to obtain long term discretionary funding to meet comprehensive needs. A drawback is that as the regulations are drafted, the overwhelming majority of the funds will go to the larger non-metropolitan cities, those close to the 50,000 population ceiling. HUD apparently is not going to adhere to Congress's intention that HUD guarantee the Secretary's discretionary funds for technical assistance to small cities.

A serious deficiency has been the failure of the Farmers' Home Administration to overhaul its civil rights compliance procedures and standards. Under the current helter skelter process, the Farmers' Administration received 123 complaints from Fiscal Year 1973 through Fiscal Year 1976 and did not find discrimination an issue in even one case.

Because rural responsibilities are shared by HUD, the Department of Agriculture and other agencies, the Administration needs to re-establish the Council for Rural Affairs. The Council, in the executive office of the President, would coordinate all Federal efforts to develop rural areas.

C. Enforcement

Enforcement of fair housing law by HUD -- namely Title VIII of the Civil Rights Act of 1968 -- has been virtually non-

existent. In recent weeks HUD has expressed a willingness to issue regulations implementing the nine-year-old law. Three financial regulatory agencies -- The Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation and the Comptroller of the Currency -- have responded to litigation by civil rights organizations by entering into a written agreement to begin implementing the title. The Federal Reserve Board has refused to do so. (The Reserve also sought to weaken its own regulations on implementation of the Equal Credit Opportunity Act).

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HUD has not announced any specific studies on housing discrimination, although its Office of Policy and Research has included among its research issues site selection to promote racial and economic integration.

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None of the programs and procedures that might assist citizens disadvantaged because of race or sex will succeed if there is inadequate funding. It appears that, despite vigorous efforts by Secretary Harris, the Administration's funding request for subsidized housing will be at roughly the same level as that of the Ford Administration and far below the targets stated in the Housing and Urban Development Act of 1968.

In the wake of the drastic reductions imposed by the Nixon moratorium, there had been hope that the Carter Administration would begin to fulfill the Congressional promise in 1949 of a "decent home and suitable living environment for every American family." This can happen only if funding levels are maintained to assure a supply of rehabilitated and newly constructed units, and to permit continued occupancy of subsidized units by the disadvantaged.

V. Health and Social Services

Like its predecessor, the Carter Administration's health and social service activities in behalf of the poor, minorities and the handicapped have been limited to responding to court action, and too often responding adversely.

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HEW has never developed guidelines for prohibiting discrimination in health and social services beyond outlawing segregative practices in the Old South. The Ford Administration in its waning days issued regulations for health care planning that ignored civil rights. To date the Carter Administration has done nothing to alter this situation. State and local health planning agencies continue to seek Federal funds without regard for, or perhaps even knowledge of, their responsibility to eliminate practices in the organization of the health system which adversely affect minorities and handicapped persons.

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It was HEW policy in the Nixon-Ford years to make state agencies administering Federally funded health and social service programs almost solely responsible for reviewing and securing civil rights compliance. The policy failed to achieve compliance. The current Administration has continued the policy. For example, in Federal court cases charging discrimination in hospital relocation, HEW continues to assert that the Federal law under which the relocations were approved does not permit HEW to interfere with state action on grounds of discrimination even though the Federal government funds the state approval process.

Further, over the years HEW refused to take enforcement action even when violations have been uncovered. That indictment still stands. HEW files contain multiple examples of formal complaints of discrimination in Federally-funded child care programs since 1970 on which it has failed to take action. In cases of discrimination by hospitals, negotiations have been allowed to lag interminably.

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